



CITY OF NEWTON, MASSACHUSETTS

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Mayor

DATE: June 8, 2007

TO: Ald. Brian E. Yates, Chairman, and
Members of the Zoning and Planning Committee

FROM: Michael Kruse, Director of Planning and Development
Juris Alksnitis, Chief Zoning Code Official
Alexandra Ananth, Planner

SUBJECT: **Update for Working Session on Petition # 66-07 of NEW ENGLAND DEVELOPMENT** proposing to amend the Newton Zoning Ordinance Section 30-15 by adding a new subsection entitled **Planned Business Development (PBD)** relative to the mixed use and design of large tracts of land in certain business districts and requirements to meet certain minimum criteria, including acreage and FAR, in turn for eligibility for certain density/dimensional bonuses and exceptions.

CC: Mayor David B. Cohen
Planning and Development Board
Philip B. Herr, Chair, Comprehensive Planning Advisory Committee

Recommendation: Review and offer guidance on items needing further consideration, send draft ordinance to Law Department for review.

The purpose of this memorandum is to provide the Zoning and Planning Committee and the public with an update on Petition #66-07 for the upcoming Committee Working Session.

I. BACKGROUND

The subject petition was initially heard by the Zoning and Planning Committee at their March 26, 2007 meeting. The hearing was kept open in order to allow the petitioner time to address issues mentioned in a previous Planning Department memorandum, as well as to respond to concerns raised at the public hearing. The petitioner subsequently provided a revised draft of the proposed Zoning Ordinance text amendment, which was discussed at a continuation of the public hearing on April 23, 2007. **The hearing was closed that evening.** Since April 23, the petitioners have made additional revisions to the proposed text amendment, including a proposed definition for elevation, a height restriction, a post construction traffic study requirement, and attempted to clarify the proposed "Modifications" criteria (*SEE ATTACHMENT "A" – Revised Text prepared by Goulston Storrs*).

The Planning Department continues to support the concept of a Planned Business Development text amendment as an additional zoning and land use tool for the City. The Department suggests that the Zoning and Planning Committee focus its continued discussion and offer policy direction on each of the following issues raised either by the proposed text amendment or its suggested modifications. Because the item is complex, the Department has not only offered suggested issues for discussion, but also suggested ways the Committee, and ultimately the Board, might respond to them.

Note that the basic concept of the PBD is something that the Department supports because it would allow a project on a parcel of sufficient size to be considered for a Special Permit even though it might be a mix of commercial and residential uses, provided, however, that the applicant demonstrated sufficient public benefit as well as sufficient mitigation of any potential adverse impacts. Getting to a successful version of this text amendment, however, will be easier if the Zoning and Planning Committee can offer the Planning and Law Departments, as well the authors of this amendment, some guidance on at least the following issues:

- > Simplification of the Proposed Text Amendment;
- > Consideration of Minimum Open Space Requirements;
- > Consideration of Further Height Restrictions;
- > Consideration of FAR (Floor Area Ratio) to include Structured Parking;
- > Consideration of Post Construction Traffic Study Mitigation Measures;
- > Consistency with the Newton Comprehensive Plan (*October 2006 Draft document under review by the Board of Aldermen*); and
- > Additional Filing Requirements for PBDs.

It is important to note that although this item was docketed by representatives of New England Development and would, if approved by the Board of Aldermen, have application to the proposed Chestnut Hill Square development off Route 9, as proposed, this text amendment would allow a Planned Business Development by special permit in any Business 4 and 5 District

II. AREAS FOR ADDITIONAL CONSIDERATION

A. Simplification of the Proposed Text Amendment

The Planning Department believes that the proposed text amendment is too complicated and difficult to understand. The Committee should consider and discuss the following issues, and the following ***Planning Department recommendations*** included within each subsection:

- Adding "Planned Business Development" as a use category in **Section 30-11** for which a special permit may be granted in Business 4 and 5 Districts (*consistent with existing language in Section 30-15(k) – Open Space Preservation Development*);
- Deleting the proposed definition of "Elevation," as it is not consistent with the City's existing definition of "Height;" and substitute "height" where it otherwise appears in the draft after verifying that the substitution does not affect the substantive meanings.
- Deleting the proposed "Purpose" provision and replacing it with a statement that is similar to the introduction of Section 30-15(k):

"Planned Business Development. In any Business 4 or Business 5 District, the Board of Aldermen may give site plan approval in accordance with the procedures provided in Section 30-23 and grant a special permit in accordance with the procedures provided in Section 30-24 and the applicable density and dimensional controls set out in Table A of this subsection for a Planned Business Development, which has the following purposes:"

- i) encourage the development of comprehensive, vibrant, mixed use projects of appropriate scale in an area that provides proximate access to major highway and public transportation;*
- ii) provide a desirable mix of land uses that will maintain and increase City and regional interests in housing, employment, transportation and infrastructure improvements, conservation, and net tax revenue;*
- iii) promote creative, efficient, and appropriate solutions to the development of complex sites while providing sufficient protection for neighbors nearby; and*
- iv) promote consistency with the City's Comprehensive Plan...."*

- Clarifying and reducing the number of the proposed Findings, which are in addition to those required under Section 30-23(c)(2), and Section 30-24(d). While not fitting the current proposal, the Planning Department notes that the requirements and criteria in Sec 30-15(r)(ii), *"Requirements for Creation of Rear Lots in Residential Districts"* provide good examples of clarity and precision worthy of emulation. (SEE ATTACHMENT "B", *Section 30-15(r) of the City's Zoning Ordinance*);

Suggested findings could include the following language: *"In addition to those required under Section 30-23(c)(2) and Section 30-24(d), the Board of Aldermen shall consider the application in light of the following criteria:*

- 1) The ability of transportation, utilities, schools, and other public facilities and infrastructure to serve the project adequately and safely without material deterioration in service to other locations;*
- 2) That conditions have been included to address any material adverse impacts on the surrounding neighborhood resulting from construction, traffic, parking, noise, lighting, blocked views, and other impacts associated with the PBD; A sentence relating to LOS in order to satisfy BY could fit here.*
- 3) Whether the PBD provides for long term public benefits to the City and region such as serving identified housing needs, substantial traffic and roadway enhancements, improved access and enhancements to public transportation, and water and sewer infrastructures enhancements;*
- 4) Whether the scale, density, and uses of the PBD have been designed with reference to the existing and proposed character and land uses in the surrounding neighborhood, the City's Comprehensive Plan, and Massachusetts General Laws, Chapter 40A, Section 9.*
- 5) Whether the PBD has been designed to create pedestrian and vehicular relationships and access routes between the PBD and abutting parcels and streets as appropriate, with consideration to streetscape continuity and an intent to minimize the impact of traffic on surrounding neighborhood streets; and*

6) *The degree to which the project provides for appropriate setbacks as well as buffering and screening from nearby residential properties, whether the quality and access of open space and recreation opportunities is appropriate for the number of residences, employees and customers of the PBD, and the extent of the conservation of natural resources on-site...."*

- Creating and adding a "Table A, Density and Dimensional Requirements for PBDs" which would list the applicable thresholds and upper limits, and eliminating any redundancies in the proposed text;
- Simplifying the proposed Exceptions provision (*proposed Section 30-15(s)(d)*), especially relating to *"uses not expressly allowed"* and *"height of any building; "*

B. Consideration of Minimum Open Space Requirements

Although there are no *"Minimum Open Space Requirements for Business or Mixed Use Districts"* in the City's Zoning Ordinance at the present time, the Planning Department believes that it is critically important to establish such minimum requirements for Planned Business Developments (PBDs). In the Town of Westwood, mixed-use developments are required to have a 10% minimum amount of open space. (*SEE ATTACHMENT "C"*)

The City of Newton currently requires a minimum of **30%** open space in any Multi-Residence Districts for multi-family dwellings *and* a minimum of **50%** open space for any development proposed under *Section 30-15(k)*, as well as for any development of attached dwellings.

In the proposed text amendment, the petitioner suggests Minimum Criteria for PBDs, including an Open Space requirement of **20%-30%** of the Development Parcel depending on the gross floor area of the project. The Committee should consider whether or not to establish a minimum open space requirement and, if so, whether the requirement should be tied to the amount of *"Gross Floor Area"* in a project, OR to the size of the development parcel. The Planning Department recommends the former in the case of an urban site and the latter in the case of one more set back from its surroundings.

Another idea for the Committee to consider is whether or not to require a higher percentage of open space in exchange for a "height bonus." *For example, height restrictions could be 96 ft or 8 stories (as currently exists) with a 20% minimum open space requirement, but with the potential for a height bonus of up to 72 additional feet or 6 additional stories with a 30% open space requirement, which the Planning Department recommends. If the petitioner can demonstrate that the total minimum open space included in the proposed Chestnut Hill Square project (which is unknown at this time using the current or proposed definition of open space) is necessary in order to appropriately mitigate project impacts while keeping the project financially feasible, the Board could/ should consider slightly lower percentages of open space.*

Another option for the Committee to discuss, although not recommended by the Planning Department at this time, is the concept of a "payment-in-lieu" of open space. *For example*, in exchange for a height bonus the petitioner could have the option of buying trees to be planted elsewhere in the City. The City of Newton could announce, just as Mayor Thomas M. Menino did in Boston, that we plan to kick-off an ambitious new urban forestry program that aims to plant

100,000 trees by the year 2020. Any developer could be granted a special permit for a PBD in a Business 4 or Business 5 District, with the condition that the petitioner shall make a significant contribution to that 100,000 tree target as long as the benefits don't become too distant from the site and *its* surroundings OR, perhaps, the petitioner could adopt a local (City-owned) recreation area and make a significant contribution to restore and preserve that area. *Note* that a precedent for this option occurred in the case of the Newton Terraces nearby (off Langley Road), but in that case the plantings were targeted in the first instance to the neighborhood affected by the development.

And, the Committee should consider whether or not to incorporate a Finding (*proposed Section 30-15(s)(c)*), *as recommended by the Planning Department*, regarding the quality and character of proposed open space to assure any open space provided is of the highest quality and will provide adequate recreation opportunities for the proposed number of residential units, employees and customers of the proposed project. The preservation of natural features, the extent to which the project can restore any degraded environmental resources and the degree to which the project provides for buffering and screening from nearby residential properties should also be evaluated.

As suggested in Criteria #6 above, such language could be along the lines of *"The degree to which the project provides for appropriate setbacks as well as buffering and screening from nearby residential properties, whether the quality and access of open space and recreation opportunities is appropriate for the number of residences, employees and customers of the PBD, and the extent of the conservation of natural resources on-site."*

Finally, it is important to note that the proposed text amendment includes examples of "open space" to include in *Section 30-15(s)(b)(6)*, as *"areas uncovered by buildings or other structures, which shall specifically include: landscaped areas; playgrounds; walkways; plazas, patios, terraces and other hardscaped areas; and recreational areas,"* which appears to be inconsistent with the City's current definition of *"Usable Open Space."* The Committee should discuss this issue further and provide further direction to the Planning and Law Departments regarding whether and how to resolve this apparent inconsistency. *The Planning Department recommends that the term "open space" in this context not be used but replaced by the term "beneficial open space" to indicate that it can be an amenity, but not to be confused with "Useable Open Space" as currently defined which is "All the lot area not covered by buildings and/or structures, roadways, drives, surface parking area or paved surfaces other than walks. The area devoted to lawns, landscaping, exterior tennis courts, patios, in-ground swimming pools and non-structural recreational amenities shall be included as usable open space. The area covered by roof overhangs of up to two (2) feet shall be included in the calculation of open space."*

Many of the suggestions proposed by the petitioner in their revised text amendment on this subject are appropriate and the *Planning Department would recommend* be included in a definition for *"beneficial open space;"* including landscaped areas, playgrounds, plazas, and portions of sidewalks that provide landscaping and other site amenities; *but not including* sidewalks used primarily for pedestrian travel around and through the site, or patios that are connected to individual housing units and not of benefit to the public.

In discussing open space considerations at its June 4, 2007 meeting, the Planning and Development Board noted that open space should be required in any PDB development. The

Planning Board was receptive to a concept of open space that included amenity type spaces, but not spaces (e.g. sidewalks) intended primarily for circulation. The Mixed Use Overlay District adopted in Westwood utilizes the term "open public space amenity areas," which includes components such as patios and landscaped with plazas incidental support structures.

C. Consideration of Further Height Requirements

Currently, the Business 4 District is the most permissive zoning district in Newton with regard to building heights, as it allows *by special permit* up to 96 ft. or 8 stories with a minimum lot area of 40,000 sq.ft. The proposed text amendment would allow up to 96 ft. in height (*by special permit*) with the possibility of an additional 100 feet in height for any building or portion thereof that is setback more than 100 feet from the front and rear lot lines. In those cases, a PBD could allow an additional one-foot in height for every one and a half feet by which the applicable portion of the building is setback from the front or rear lot line.

As a reference, the two tallest projects in the Chestnut Hill section of Route 9 are: *Imperial Towers* at 280 Boylston Street and *Chestnut Hill Towers* at 250 Hammond Pond Parkway. Imperial Towers is 10 stories and the Chestnut Hill Towers is 16 stories with a height restriction in the Board Order of 143 ft. The Board of Aldermen approved both of these projects prior to the adoption of current restrictions on building height.

The Planning Department supports the petitioner's suggestion to allow for increased height in relation to greater setbacks. An example of where this is done already in the City's Zoning Ordinance is Section 30-15 Table 2, Religious and Non-Profit Educational Uses, which are allowed to "...increase the building height by one story for every 150 ft. of distance from streets and/or abutting properties but not to exceed 6 stories or 60 ft."

However, the Planning Department believes that the proposed text amendment to allow (*by special permit*) up to 196 ft. and up to 16 stories would be inconsistent with character of the Route 9 corridor in the City of Newton. ***The Planning Department would recommend allowing (by special permit) one additional foot in height for every one and a half feet by which the applicable portion of the building is setback from any street but not to exceed 14 stories or 168 ft*** If used, this concept would become part of the ordinance at section 30-15(s)(d)(5).

If the petitioner can demonstrate that the total number of stories and total height for the proposed Chestnut Hill Square project (which is unknown at this time using the current definitions) is necessary in order to appropriately mitigate project impacts while keeping the project financially feasible, the Board could/ should consider exceeding 14 stories or 168 ft

Other options suggested by the petitioner, although not recommended by the Planning Department at this time, would allow different height limits depending on if the PBD site borders a residential or commercial neighborhood, or to have the allowed height to be measured by building heights in the immediate area (i.e. the petitioner's most recent revised draft Ordinance states that where "...the *elevation of any building in the PBD shall not exceed the Elevation of the highest building located within 2,000 feet of the Development Parcel by more than five percent (5%).* "

Again, a further option is to create a finding as to whether the proposed buildings exceed the average height of surrounding buildings within a certain immediate area and are compatible with the scale of the surrounding neighborhood. However, in the case of the proposed Chestnut Hill Square project it is important to remember that the character of the Florence Street side of the site is mostly 1 1/2 and 2-story residences and is very different from the Boylston Street side of the site. It may be appropriate for height limitations on a larger site to vary depending on neighborhood character abutting different portions of the Development Parcel.

When discussing the building height issue at its June 4, 2007 meeting, the Planning and Development Board touched on several approaches. Some members felt that the building height was appropriate so long as an FAR of 3.0 was maintained to control development intensity. Others indicated concerns that the potential height might become excessive too close to Route 9. In comparison, it was noted that the 16 story Chestnut Hill Towers development was significantly set back from Rt. 9. Finally, Board members also pointed out that the height mechanism needs to be workable wherever a PBD type development might be undertaken in the City.

As suggested in Criterion #4 above, such language could be along the lines of *"Whether the scale, density, and uses of the PBD have been designed with reference to the existing and proposed character and land uses in the surrounding neighborhood...."* **OR** *"Whether the proposed building(s) or structure(s) exceed the height of the highest building located within 2,000 ft of the Development Parcel by more than five percent and are compatible with the sale of the surrounding neighborhood...."* Of these options identified above, the Department recommends.... "to allow (**by special permit**) one additional foot in height for every one and a half feet by which the applicable portion of the building is setback from any street **but not to exceed 14 stories or 168 ft** ,

D. Consideration of FAR (Floor Area Ratio) to include Structured Parking

An additional area for consideration is whether the allowable FAR should exclude surface or structured parking and loading areas as suggested by the petitioner in the proposed text amendment. The Planning Department believes that above-grade structured parking should be included in the FAR calculation in order to encourage underground parking and additional green space wherever possible. FAR is the indicator of the intensity and bulk of a site and allowing projects not to count above grade structured parking in the FAR would undercount the actual intensity of a development.

Again, because the Planning Department is encouraging a mix of commercial and residential uses in PBDs we feel it critically important that sites be developed with residential character in mind including underground parking and as much open space as possible. In the case of Chestnut Hill Square, the majority (more than 50%) of the gross floor area is devoted to residential uses and therefore the site should have more of a mixed-use character and not a dominantly commercial character. The Planning Department recommends creating a "Table A, Density and Dimensional Requirements for PBDs" with a Maximum Total FAR Ratio of 3.0 and striking any references to "excluding surface or structured parking and loading areas" from the petitioner's proposed text. *If the petitioner can demonstrate that the total FAR for the proposed Chestnut Hill Square project (which is unknown at this time using the current definition of FAR) is necessary in*

order to appropriately mitigate project impacts while keeping the project financially feasible, the Board could/ should consider an FAR higher than 3.0.

At its meeting on June 4, 2007, Planning and Development Board members felt strongly that structural parking should not be excluded from FAR, noting that no other zone in the City allows such an exclusion. In addition to expressing concern regarding the issue of correctly reflecting the actual development intensity on a PDB site, Board members also noted that in the current market "condoized" parking spaces are often sold as parking units, and should not be exempted from FAR.

Another idea for discussion, although not recommended by the Planning Department at this time, is that if a project needs above grade structured parking it should be connected with some public benefit such as more amenities on-site, adoption of open or recreational space elsewhere in the City, a payment in lieu, or additional traffic mitigation measures.

E. Consideration of Post Construction Traffic Study Mitigation Measures

The petitioner has suggested that the owner of a PBD be required to submit a traffic impact and access study to the Board of Aldermen two years after the PBD has reached full occupancy. The Planning Department is supportive of this idea but suggests that the post construction traffic study should be submitted one year after the issuance of the final certificate of occupancy *and* that if the study concludes that the actual number of vehicle trips generated by or distributed to the PBD is 10% greater than the projected number of trips, mitigation be required. *The Planning Department recommends the following language:*

"A traffic impact and monitoring program of the site shall be conducted, and shall include an examination of the number of vehicle trips being generated by the site and the roads upon which vehicle trips are distributed. An independent trip generation and distribution analysis (paid for by the developer but conducted or overseen by the City) shall occur one year after the issuance of the final certificate of occupancy. The time(s) in which the measurements are to be conducted shall be determined by the Director of Planning and Community Development and the City Traffic Engineer, and may include comparison(s) of vehicle trips per peak hour, peak period, day, and/or weekend day.

The analyses shall compare actual trip generation and distribution to the site against projected trip generation and distribution to the site. In the event that this post-occupancy analysis concludes that the actual number of vehicle trips being generated and/or distributed to the site is at least 10% greater than the projected number of vehicle trips that would be generated and/or distributed to the site, a traffic reduction requirement will be triggered. The traffic reduction requirement will necessitate the establishment of a traffic reduction program within six months, which will necessitate the following.

- *A reduction in the number of vehicle trips among employees, residents, or visitors to the site shall be required such that the number of vehicle trips being generated by the site or distributed onto various streets is within 10% of the originally projected site trip generation and distribution rates. The petitioner may choose any technique to reduce the number of vehicle trips generated by the site, or distributed onto*

various streets, subject to the approval of the Director of Planning and Community Development and the City Traffic Engineer. Such options may include:

- ✓ *Reduction in single-occupant-vehicle trips;*
- ✓ *Improved shuttle or other transit system, service or program including free or discounted transit passes;*
- ✓ *Increased carpooling;*
- ✓ *Increased use of zipcars;*
- ✓ *Construction or improvement of bicycle facilities, including showers and bicycle racks;*
- ✓ *Reduction in the number of parking spaces;*
- ✓ *Changes to the parking fee system, such as charging a fee or an increased fee to park, or charging residents for their second or third parking space;*
- ✓ *Changes to nearby infrastructure, including new traffic signals, modifications to existing traffic signals, traffic calming or other roadway changes, or other technique. This will require the approval of the City and possibly other regional and/or state agencies; or*
- ✓ *Other approved technique(s) designed to reduce the number of vehicle trips being generated to the site, and/or distributed onto various roads, by at least 10%.*

After a traffic reduction program is enacted, an independent follow-up trip generation and distribution analysis (paid for by the developer or management company, but conducted or overseen by the City) shall be required within one year, to re-measure trip generation and distribution rates to the site. In the event that this analysis concludes that actual vehicle trip generation and/or distribution rates to the site is at still 10% or more than the originally projected rates, the City reserves the right to require additional mitigation until the measured trip generation and distribution rates are within 10% of the projected trip generation and distribution rates to the site...."

F. Consistency with the Newton Comprehensive Plan

(October 2006 Draft document under review by the Board of Aldermen)

It is important to note that the above proposed "Purpose" and "Findings" language suggested by the Planning Department was written with reference to the Draft Newton Comprehensive Plan.

While the discussion herein is not intended to summarize all related aspects of the Newton Comprehensive Plan, which may bear on the subject petition, it is noted that various sections contain information, which provide guidance in considering the proposed amendment and crafting qualitative findings and criteria/requirements for PBDs.

It is fair to say that the Newton Comprehensive Plan envisions a process for crafting new zoning mechanisms, such as a Planned Business Development overlay, as starting with articulation of the desired (good) place-making outcomes, along with applicable goals, strategies, and standards associated with such a mechanism.

The *Newton Comprehensive Plan* document also places significant emphasis on how Newton seeks to encourage and achieve the development of good places within the City (see section entitled *Excellence in Place-Making*, pages 2-1 through 2-7). A key aspect of this undertaking is to ensure excellence both in process and outcomes. While encouraging creative approaches, the *Newton Comprehensive Plan* also contains extensive discussion pointing to the need for clear articulation of goals, strategies, and clear guidance ahead of moving to major new zoning regulatory mechanisms. Subsequently, within the above context, the section titled *"Land Use — An Overview"*, articulates the following statement at the third bullet (page 3-6):

- *"Intensive, well planned corridor development is anticipated and welcomed on Needham Street and Chestnut Hill, as long as it is integrated with and helps produce transport enhancements sufficient to make the net impact of that development a positive one."*

While the *Business Implementing Actions* subsection, states in paragraph e (page 3-29):

- *"Implement zoning changes that encourage well-designed mixed use as an alternative to incrementally haphazard business sprawl, particularly for areas of the City having retail use, public transportation and good pedestrian access, strengthening both business and residential uses over time, and facilitating designs which assure compatibility between commercial and residential uses where such uses adjoin."*

These concepts deserve full consideration and the idea of making ease of access and proximity to major employers, public transportation, schools, and other services must be an explicit consideration in acting on proposals for PBDs. Acknowledging that the proposed purpose and findings can be improved is the intent of the Planning Department suggested language.

G. Additional Filing Requirements for PBDs

Finally the Planning Department raises the idea of additional filing requirements for PBDs in order to ensure that the Board of Aldermen can fully comprehend and thoroughly evaluate any such proposed projects. Some ideas for additional submittal requirements include a scaled massing model; a narrative analysis describing design features intended to integrate the proposed PBD into the surrounding neighborhood, including the existing landscape, abutting commercial and residential character and other site specific considerations; a statement describing how the open space areas are intended to be used; and site plans showing "by-right" alternatives. *The Planning Department recommends that the Committee support the idea of additional filing requirements for PBDs consisting of the above recommendations.*

III. NEXT STEPS

Upon additional consideration of the above mentioned issues, the Committee should give further guidance to the Planning and Law Departments so that a revised proposed text amendment could be drafted for final consideration by the Committee.

Recommendation: Review and offer guidance on items needing further consideration, send draft ordinance to Law Department for review.

REVISED DRAFT —for further discussion

Prepared by Goulston & Storrs, on behalf of New England Development, (received May 14, 2007) and revised to incorporate the two remaining issues regarding a traffic study and overall limitation on height.

1. Section 30-1 is amended by adding the following two definitions:

Development Parcel: The real property on which a Planned Business Development is located, as shown on a Planned Business Development Plan approved by the Board of Aldermen in connection with a special permit under this section 30-15(s).

Elevation: The distance between mean sea level and the roofline of a building (excluding customary mechanical enclosures and rooftop elements .

Planned Business Development or PBD: Any construction, alteration, enlargement, extension or reconstruction of buildings or structures, together with all facilities, parking, infrastructure and development related thereto, located on a parcel or collection of contiguous parcels, which meet certain minimum criteria set forth in Section 30-15(s) and which can provide for additional density and other exceptions beyond those available as of right provided the applicable criteria set forth in Section 30-15(s) are met.

2. Section 30-11(d) is amended by renumbering subparagraph (12) as (13) and adding the following as new subparagraph (12): "In Business District 4, a Planned Business Development;"
3. Section 30-11(i) is amended by renumbering subparagraph (7) as (8) and adding the following as new subparagraph (7): "A Planned Business Development;"
4. The following Section 30-15(s) is added:

Section 30-15(s) Planned Business Development (PBD)

- (a) *Purpose.* This Section has been enacted to encourage the best use and design of large tracts of land in certain business districts, while promoting the best interests of residents of the City, through the use of Planned Business Developments. The major objectives of this section are to: (a) facilitate development of a mix of uses that will increase the vitality in the Business 4 and Business 5 zoning districts; (b) create new jobs at a variety of income and skill levels; (c) replace vacant and blighted buildings with mixed-use development that will contribute to the fiscal health of the City; (d) encourage the development of affordable housing opportunities in accordance with the City's Inclusionary Housing Ordinance; (e) to the extent feasible, enhance the surrounding neighborhood, and (f) promote consistency with the City's comprehensive planning and Comprehensive Plan.

- (b) *Minimum Criteria for PBDs.* In order to be eligible for any approval under Section (e) below, a PBD must meet the following threshold criteria:
- (1) The Development Parcel shall be located in the Business 4 or Business 5 zoning district;
 - (2) The Development Parcel shall contain a minimum of ten (10) acres;
 - (3) The total Floor Area Ratio of the PBD (excluding surface or structured parking and loading areas) shall not exceed 3.0;
 - (4) The PBD shall include a mix of commercial and residential uses;
 - (5) The PBD shall provide onsite and/or offsite affordable housing opportunities in accordance with the City's Inclusionary Housing Ordinance (Section 30-24(0));
 - (6) A Development Parcel in the Business 4 District shall contain at least 1,200 square feet of land area, whether improved or unimproved, for each dwelling unit located on the Development Parcel and a Development Parcel in the Business 5 District, shall contain at least 1,500 square feet of such land area for each dwelling unit located on the Development Parcel;
 - (7) At least 20% percent of the Development Parcel on which a PBD with less than 250,000 square feet of gross floor area is located, and at least 30% percent of the Development Parcel on which a PBD with 250,000 or more square feet of gross floor area is located, shall consist of open space, e.g. areas uncovered by buildings or other structures, which shall specifically include: landscaped areas; playgrounds; walkways; plazas, patios, terraces and other hardscaped areas; and recreational facilities;
 - (8) Buildings in the PBD shall not exceed the heights permitted under Section 30-15(s)(d)(5) below; and
 - (9) If the PBD includes a mix of uses and includes shared parking facilities, the following parking stall requirements shall apply to the PBD: (a) a minimum of 1.25 parking stalls for each dwelling unit, and (b) one parking stall for each 300 square feet of gross floor area of commercial use; otherwise a PBD shall be required to meet the parking stall requirements set forth in Section 30-19(d).
- (c) Prior to granting any approval under Section (d) below, the Board of Aldermen shall first make the following findings, which findings shall be in addition to those required under Section 30-23(c)(2) and Section 30-24(d), with respect to the PBD:
- (1) As part of the construction and ultimate use of the PBD, conditions have been included to address any material adverse impacts on the immediate or nearby neighborhood resulting from construction itself, as well as traffic, parking and noise and other impacts associated with the as-built PBD;
 - (2) The PBD provides for long term public benefits, such as affordable housing, substantial traffic and roadway enhancements, water and sewer infrastructure enhancements, to the immediate or nearby neighborhood;
 - (3) The PBD provides public transit enhancements, including onsite public transportation facilities, transportation demand management initiatives, and connectivity to offsite public transportation systems via shuttle service or other appropriate mechanisms;

- (4) The PBD has been designed with reference to the existing and currently proposed or planned land uses in the vicinity of the PBD;
 - (5) The PBD includes uses compatible with abutting parcels and consistent with the City's Comprehensive Plan that are supportive of a well-planned region-serving corridor and which are integrated with and help produce transportation and other infrastructure enhancements that produce net positive impacts for the City;
 - (6) The PBD creates relationships between the PBD, and abutting parcels and between the PBD and abutting streets, that are designed with appropriate consideration to streetscape continuity, where appropriate, and setbacks from abutting properties and ways;
 - (7) The PBD includes access routes between the PBD and abutting parcels and ways that facilitate and enhance pedestrian and vehicular access within the neighborhood;
 - (8) The PBD is in furtherance of the goals and policies of the City's comprehensive planning and Comprehensive Plan; and
 - (9) The PBD is in harmony with the general purpose and intent of this Ordinance pursuant to Massachusetts General Laws Chapter 40A, Section 9.
- (d) *Density/Dimensional Bonus and Exceptions.* If a PBD is eligible for approval under Sections (b) and (c) above, the Board of Aldermen may grant site plan approval in accordance with the procedures provided in Section 30-23 and may grant a special permit in accordance with the procedures provided in Section 30-24 for the PBD granting exceptions to any applicable provisions of this Ordinance relating to density, bulk or dimensional controls, signage (whether onsite or offsite) and access, and/or permitting any use not expressly allowed in the Business 4 or Business 5 Districts; provided, however, that the following limitations shall apply: (1) Floor Area Ratio shall not exceed 3.0; (2) minimum off-street parking shall not be reduced by more than 1/3 of the parking otherwise required for the PBD under Section 30-19(d) or this Section 30-15(s), as applicable, if the criteria under Section 30-19(d)(18) are satisfied; (3) notwithstanding any applicable ordinance to the contrary, minimum lighting requirements may be reduced but not to less than an average of 0.75 footcandles; (4) uses not expressly allowed in the Business 4 or Business 5 Districts, but allowed by right or by special permit in other business or mixed-use districts in the City, shall be allowed only if the Board determines that they are compatible with the mix of uses within the PBD; (5) the height of any building in the PBD shall not exceed 96 feet; provided, however, that: (i) any building, or portion thereof, that is setback more than 100 feet from the front and rear lot lines may include an additional one foot of height (excluding customary mechanical enclosures and rooftop elements) for every one and a half feet by which the applicable portion of the building is set back from the front or rear lot line, whichever is closer, up to a maximum of an additional 100 feet; and (ii) the Elevation of any building in the PBD shall not exceed the Elevation of the highest building located within 2,000 feet of the Development Parcel by more than five percent (5%); and (6) all signage for a PBD shall be in accordance with the provisions of this Ordinance and a comprehensive signage program developed by the applicant and approved by the Board in accordance with the provisions of this Ordinance.

- (e) *Lots.* In the application of the requirements of this Ordinance to a PBD, the same shall not be applied to the individual lots or ownership units comprising a Development Parcel, but shall be applied as if the Development Parcel were a single conforming lot whether or not the Development Parcel is in single or multiple ownership; provided, however, that violation of this Ordinance by an owner or occupant of a single lot or ownership unit or demised premises within a PBD shall not be deemed to be a violation by any other owner or occupant within the PBD. Any PBD in multiple ownership shall be required to form a property owners association to coordinate the operation of the PBD among property owners and to facilitate communication with the City regarding the PBD.
- (f) *Phasing.* Any PBD may be built in multiple phases over time. Notwithstanding the provisions of Section 30-24(c)(4) or other provisions of this Ordinance, provided that the development of a first phase of the PBD is commenced within two years of the issuance of such approval, exclusive of any period during which an appeal of the same is pending or any period during which events beyond the reasonable control, or otherwise for good cause, of the applicant or its successor delays the exercise of its rights, approvals under this Ordinance for a PBD shall not lapse; provided, however, that such phasing may be specified in the site plan approval.
- (g) *Post-Construction Traffic Study.* The owner of the PBD shall be required to submit a traffic impact and access study to be prepared by a licensed professional traffic engineer to the Board of the Aldermen two years after the PBD has reached full occupancy.
- 1111 (g) *Modifications.* Any material modification to a PBD shall require Site Plan Approval by the Board of Aldermen in accordance with Section 30-23. The following provisions shall apply with respect to any proposed modification of a PBD: (A) a change of use or relocation of a use within the PBD shall not require additional approvals under this Ordinance if the total Gross Floor Area within the PBD devoted to such use does not increase by more than five percent (5%) in the aggregate; and (B) a change of use that results in a lower net parking requirement for the PBD (pursuant to Section 30-19) shall not require additional approvals under this Ordinance; and (C) a change of use or an increase in the floor area or unit count, as applicable, of a use within the PBD shall require Site Plan Approval by the Board of Aldermen in accordance with Section 30-23 unless the applicant demonstrates that the total traffic generation of the PBD, with the proposed change, will not exceed the total traffic generation of the PBD set forth in the applicant's pre-development traffic study.
- (i) *Applicability.* Buildings, structures, lots and uses within or associated with a PBD shall be governed by the applicable regulations for the Business 4 District or the Business 5 District, as applicable, except as modified by the provisions of this section 30-15(s). Where provisions of this Ordinance conflict or are inconsistent with the provisions of this section 30-15(s), the provisions of this section 30-15(s) shall govern.

#225-01(3)

CITY OF NEWTON

IN BOARD OF ALDERMEN

December 6, 2004

ORDINANCE NO. X- 123

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEWTON AS FOLLOWS:

That the zoning regulations, Chapter 30 of the Revised Ordinances of the City of Newton, Mass., 2001, as amended be and are hereby further amended as follows:

1. *Add a new subsection 30-15(;) with Table A, Requirements For Creation of Rear-Lots in Residential Districts to section 30-15, as follows:*

Section 30-15(r). Requirements For Creation of Rear Lots in Residential Districts.

Purpose: The purpose of this subsection is to eliminate or mitigate against potential undesirable development impacts on adjacent residential uses and neighborhoods by the application of the density and dimensional controls set out in Table A of this subsection as well as through the requirement of a special permit that shall include, but not be limited to, a review of proposed building placement and buffering.

(r)(1). Definition of rear lot.

A rear lot is defined as a parcel of land not fronting or abutting a street, as defined in section 30-1, which does not have the required minimum frontage directly on a street, and which has limited access to a street by either (1) a "flag pole" or "pan-handle" shaped portion of the lot, (2) an easement over an adjoining lot possessing frontage directly on the street, or (3) a private right-of-way as shown or described in plans or deeds duly recorded with the Middlesex (South) Registry of Deeds. A rear lot may, with the permission of the board of aldermen in accordance with the procedure provided in section 30-24, satisfy the minimum frontage requirement for the zoning district in which it is located by measuring lot frontage along the rear line of the lot or lots in front of it.

(2) Administration.

- a) Creation of rear lots in residential zoning districts shall require a special permit from the board of aldermen in accordance with the procedure provided in section 30-24. The rear lot development density and

dimensional controls in section 30-15(r), Table A, shall apply to the proposed rear lot(s) and the remainder of the original lot shall be subject to the density and dimensional controls of section 30-15, Table 1, for lots created after December 7, 1953, unless waivers from either of such controls are granted by the board of aldermen in accordance with the section 30-15(r) (3) below.

- b) The provisions of section 30-26 shall not apply to the creation of rear lots under this subsection.
- c) In addition to the provisions of section 30-23 and 30-24, general application requirements and criteria for grant of a special permit for a rear lot development are as follows:
 - i) Applicants must submit a sufficient number of copies of architectural plans for all proposed residential buildings and structures, a landscape plan, site plan, and an area plan showing distances from proposed building(s) or structure(s) to existing residential buildings and structures used for accessory purposes on the original lot and all abutting lots, along with information on the heights and number of stories of these existing building(s) or structure(s). All plans must be prepared, stamped and signed, as appropriate, by an architect, landscape architect, professional engineer or registered land surveyor.
 - ii) The board of aldermen shall consider the special permit application for a rear lot development in light of the following criteria:
 - (a) Whether the proposed building(s) or structure(s) exceed the respective average height of abutting residential buildings and structures used for accessory purposes;
 - (b) The scale of a proposed building(s) or structure(s) in relation to adjacent residential buildings and structures used for accessory purposes, and the character of the neighborhood;
 - (c) Topographic differentials, if any, between proposed building(s) or structure(s) and adjacent residential buildings and structures used for accessory purposes;
 - (d) Proposed landscape screening;

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- (e) Adequacy of vehicular access, including, but not limited to fire and other public safety equipment, with emphasis on facilitating common driveways;
- (f) Whether any historic or conservation public benefit is provided or advanced by the proposed development;
- (g) Whether the location of structures used for accessory purposes or mechanical equipment, including but not limited to free-standing air conditioning units or compressors, on the new rear lot(s) or on abutting lots will negatively impact either the proposed rear lot development or abutters' property;
- (h) **Proposed siting of the proposed building(s) or structure(s)** with reference to abutting residential buildings or structures used for accessory purposes; and
- (i) Impact of proposed lighting on the abutting properties.

(3) *Exceptions.*

The rear lot development density and dimensional controls in section 30-15(r), Table A, shall apply to the proposed rear lot(s) and the remainder of the original lot shall be subject to the density and dimensional controls of section 30-15, Table 1, for lots created after December 7, 1953, unless the existence of one or more of the conditions enumerated below justifies a waiver by the board of aldermen of one or more such controls:

- a) If the proposed rear lot development will create, in either an existing building or in a building to be constructed, at least one (1) new dwelling unit that satisfies the requirements for the provision of an affordable housing "inclusionary unit" as set out in section 30-24(f), the board of aldermen may grant a waiver permitting the new rear lot(s) to utilize dimensional controls set out in section 30-15(e) and section 30-15, Table 1, for lots created after December 7, 1953;

Where an existing building or structure listed on the State or National Register of Historic Places, or designated as a Newton Landmark Preservation Site, does not meet the applicable dimensional controls for a rear lot development established in this subsection, but is a valid nonconforming building or structure

solely due to a substandard front or side setback(s) or both, the board of aldermen may waive the applicable front or side setback requirements, or both, provided that the required setback shall not be reduced to less than the actual existing setback distance.

2. *Delete the existing text of subsection 30-15(b)(4) and renumber existing subsection 30-15(b)(5) as a new subsection 30-15(b)(4). The existing subsection 30-15(b)(4) to be deleted reads as follows:*

(b) Lot frontage.

- (4) In the case of a rear lot not having the required frontage on a street, the required lot frontage may be measured along the rear line of the lot or lots in front of it with the permission of the board of aldermen in accordance with the procedure provided in section 30-24;

Approved as to legal form and character:




Daniel M. Funk
City Solicitor

Under Suspension of Rules
Readings Waived and Approved
21 yeas 1 nay (Ald. Samuelson) 2 absent (Ald. Gentile and Harney)

EXECUTIVE DEPARTMENT

Approved: December 8, 2004


(SGD) EDWARD G. ENGLISH
City Clerk



(SOD) DAVID B. COHEN
Mayor

TABLE A - DIMENSIONAL CONTROLS FOR REAR LOT DEVELOPMENT IN RESIDENCE ZONES

ZONING DISTRICT	MIN. REQ. LOT AREA	VEHIC. ACCESS(1)	FRONTAGE(2)	SETBACKS			ALT. RES. BUILDING SEP.(4)				TOTAL FL. AREA RATIO(5)	BLDG HEIGHT(6)	MAX # STOR.(7)	MAX. BLD. LOT CO-VERAGE	MIN. REQ. OPEN SPACE
				FRONT(3)	SIDE	REAR	SIDE MIN SEP.	TO REAR LINE	TO REAR SEP.	MIN TO LINE					
SR-1	30,000	20	140	40	30	38	60	20	76	25	0.12	30	2.5	13%	70%
SR-2	18,000	20	100	30	23	23	46	15	46	15	0.20	30	2.5	17%	65%
SR-3	12,000	20	80	30	15	23	30	10	46	15	0.24	30	2.5	25%	50%
MR-1	12,000	20	80	30	15	23	30	10	46	15	0.28	30	2.5	25%	50%
MR-2	12,000	20	80	25	15	23	30	10	46	15	0.28	30	2.5	25%	50%
MR-3	12,000	20	80	25	12	23	24	8	46	15	0.28	30	2.5	25%	50%
MR-4	12,000	20	80	25	15	23	30	10	46	15	0.28	30	2.5	25%	50%

NOTES:

1 May be provided in fee as part of the lot with street frontage 20 ft. wide or as a legal easement or right-of-way 20 ft. wide.

If provided in fee, the area utilized for vehicular access (lot stem portion) may not be counted more than 20% toward minimum lot area requirement,

2 Required for street lot. Also required for rear lot, but may be measured along the rear lot line of the lot in front.

3 Subject to special permit, a building on a rear lot may be located no closer than 25 ft. from the rear line of the lot in front.

4 Alternate side building separation standard (measured across lot line, building to building) may be utilized in place of required sideyard. Note min. distance to lot line.
Alternate rear building separation standard (measured across lot line, building to building) may be utilized in place of required rear yard. Note min. distance to lot line.

5 FAR applies as described in Table 1, Footnote 7

6 Building height applies as described in Table 1, Footnotes 2 and 8.

7 Allow three stories by special permit if the proposed structure is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood

Planning and Development Department

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- 9.5.11.4 ability of the project to potentially link with adjoining sites in the PDAOD, particularly with respect to architectural compatibility, roadway alignments and pedestrian access;
- 9.5.11.5 degree to which the project provides for effective flood mitigation and stormwater storage measures for the site and proximate residential properties; and
- 9.5.11.6 buffering and screening from abutting residential properties.

9.5.12 **Reimbursement for Consultants.** It is contemplated that in some cases it will be necessary for the Planning Board to hire consultants in connection with the review and evaluation of applications for special permits pursuant to this Section. The Planning Board will be reimbursed by the Applicant for the reasonable fees and expenses of such consultants, and each application for a special permit hereunder shall contain an agreement by the Applicant to that effect.

9.6 MIXED USE OVERLAY DISTRICT (MUOD)

9.6.1 **Purpose.** The purpose of the Mixed Use Overlay District (MUOD) is as follows:

- 9.6.1.1 to encourage the development of comprehensive projects of appropriate scale in an area that provides proximate access to major highway and public transportation;
- 9.6.1.2 to provide a desirable mix of land uses, including both residential and nonresidential development that will serve Town and regional interests in housing, employment, conservation and net tax revenue;
- 9.6.1.3 to promote creative, efficient and appropriate solutions to the development of complex sites.

9.6.2 **Location.** MUOD 1, MUOD 2 and MUOD 3 are herein established as overlay districts. The MUODs shall include the areas as shown on the Zoning Map.

9.6.3 **Applicability.** Except as otherwise provided herein, the provisions of this Section shall apply to MUOD 1, MUOD 2 and MUOD 3. A project in a MUOD may be authorized by special permit for an Area Master Plan encompassing any parcel or set of parcels held in common or separate ownership which have an aggregate land area of fifty (50) acres or more and are located in one or more MUODs. If the application for development under MUOD provisions involves more than one ownership, each owner of land included in the Area Master Plan shall be a party to the application and upon approval of the application, subject to its provisions.

9.6.4 **Special Permit Required.** Development under MUOD provisions requires special permit approval of an Area Master Plan by the Planning Board in compliance with the

provisions of this Section. Application for any special permits which may otherwise be required pursuant to this Bylaw, except for the special permit required under Section 8.7, Residential Retirement Community and Section 9.3, Water Resource Protection Overlay District, may be consolidated into a MUOD Area Master Plan special permit application. Such consolidated special permit application may be acted upon by the Planning Board in accordance with the requirements of Section 9.6.12 by issuance of an Area Master Plan special permit, regardless of which board is designated as the Special Permit Granting Authority in the applicable sections of this Bylaw. Special permits pursuant to Section 5.5.6, Creation of Ways, Section 6.3.2 Buffer Areas in Nonresidential Districts, Section 6.5, Floor Area Ratio Limitation, Section 7.2, Major Business Development (MBD), Section 8.5, Major Residential Development (MRD) and Section 8.6, Senior Residential Development (SRD) shall not be required for development under a MUOD Area Master Plan.

9.6.5 Permitted Uses. Subject to the provisions of this Bylaw applicable to the underlying district, unless otherwise provided herein, land and buildings within a MUOD may be used for any purpose permitted as of right or by special permit in the underlying district. Multiple uses may be contained within a single building or structure. The following uses may be included within an Area Master Plan in addition to the uses allowed in the underlying district pursuant to Section 4.0, Use Regulations:

- 9.6.5.1 Commercial outdoor recreation;
- 9.6.5.2 Hotel on less than five (5) acres;
- 9.6.5.3 Non-exempt educational use;
- 9.6.5.4 Parking garage as a principal use;
- 9.6.5.5 In MUOD 2 and MUOD 3 only, multi-family dwelling consisting solely of residential condominiums;
- 9.6.5.6 In MUOD 2 and MUOD 3 only, interior establishments selling fast order food;
- 9.6.5.8 Uses accessory to the uses cited above and to the uses permitted in the underlying zoning district.

9.6.6 Use Limitations.

- 9.6.6.1 The following uses are prohibited within an Area Master Plan: motor vehicle sales and rentals; motor vehicle general and body repairs; motor vehicle light service and self-storage or mini-storage facilities.
- 9.6.6.2 Warehouse and wholesale or distribution facilities are allowed within an Area Master Plan only as an alteration or expansion of an existing facility.

9.6.7 Alternative Regulations. The following alternative regulations may be used for a project in the MUOD rather than the regulations applicable to the underlying district as provided in Section 5.2, Table of Dimensional Requirements, Section 5.4, Height Regulations, Section 5.5.4, Corner Clearance, Section 5.5.5 Uses within Setbacks, Section 6.3.2, Buffer Areas in Nonresidential Districts and Section 6.5, Floor Area Ratio Limitation:

- 9.6.7.1 The aggregate floor area ratio within MUOD 1 and MUOD 2, exclusive of MUOD 3, shall not exceed 1.0. The aggregate floor area ratio within MUOD 3 shall not exceed 1.2, except that for any Area Master Plan that includes lots within MUOD 2 and MUOD 3, the aggregate floor area ratio for all lots within MUOD 2 and MUOD 3 of said Area Master Plan shall not exceed 1.1. The floor area ratio on individual lots within an Area Master Plan may exceed the MUOD district limit provided that the aggregate floor area ratio of each MUOD within the Area Master Plan, or the aggregate floor area ratio of combined MUODs within the Area Master Plan, shall not exceed the aggregate maximum limits of the MUODs, each or combined, within the Area Master Plan, as specified herein.
- 9.6.7.2 There shall be no minimum setback or corner clearance requirements and retail use, restaurant and other types of seating may be allowed within setbacks and not be subject to Section 6.3.1, Enclosure Requirements in Highway Business and Industrial Districts.
- 9.6.7.3 There shall be no minimum lot width, lot frontage, lot area, nonwetland area or maximum building coverage requirements.
- 9.6.7.4 The maximum impervious surface requirements shall be met across the aggregate of all land in lots and Open Public Amenity Areas within the Area Master Plan, but do not have to be met on each individual lot.
- 9.6.7.5 The maximum building/structure height in MUOD 2 shall be seventy (70) feet and a maximum of six (6) stories, provided that the height shall not in any case exceed one hundred seventy-eight and one-half ($178\frac{1}{2}$) feet above sea level. The maximum building/structure height in MUOD 3 shall be one hundred twenty (120) feet but in no case shall exceed one hundred seventy-eight and one-half ($178\frac{1}{2}$) feet above sea level. All unoccupied mechanical features pursuant to Section 9.6.7.6 shall be included in the calculation of building/structure height over seventy (70) feet in MUOD 3. Any additional building/structure height over seventy (70) feet which is allowed in MUOD 3 shall be designed to relate harmoniously to the terrain and to the use, scale and architecture of existing buildings and to mitigate the visual impacts on surrounding non-industrial uses. The project proposal shall incorporate aesthetically-

conscious design which promotes environmentally compatible uses, pervious surfaces and landscaped areas in exchange for the additional building/structure height.

9.6.7.6 Unoccupied mechanical features such as chimneys, ventilators, skylights, tanks, bulkheads, penthouses, amateur radio antennae and other necessary features usually carried above the roof line and which are exempted from the limitations on building/structure height may cover up to eighty percent (80%) of the roof area of the building or structure provided that no such features exceed one hundred seventy-eight and one-half (178 1/2) feet above sea level.

9.6.7.7 Where a lot in the MUOD abuts or is within twenty (20) feet of the boundary line of any Residential District, a buffer area shall be provided on all portions of said lot so abutting that shall have a minimum width of fifty (50) feet. Said buffer area shall be used exclusively as a planting area so as to create a substantially sight impervious screen.

9.6.8 Residential Controls.

9.6.8.1 A minimum of two hundred (200) housing units shall be included in any Area Master Plan which includes any housing.

9.6.8.2 Pre-existing and new housing units shall occupy no more than one-third (1/3) of the total gross floor area at the completion of the build-out of the Area Master Plan.

9.6.8.3 The gross floor area contained within housing units granted occupancy permits pursuant to the Area Master Plan shall not exceed the gross nonresidential floor area granted occupancy permits pursuant to said Area Master Plan at any stage in the development process.

9.6.8.4 Housing affordability shall be provided for as follows:

9.6.8.4.1 A minimum of twelve percent (12%) of the housing units in the Area Master Plan shall be "affordable" as defined in this Bylaw.

9.6.8.4.2 An additional five percent (5%) of the housing units in the Area Master Plan shall be either "affordable" or "moderate income" as defined in this Bylaw, unless the Planning Board determines a proposed alternative to be at least equivalent in serving the Town's housing needs.

- 9.6.8.4.3 A fee as stipulated in the Area Master Plan approval shall be paid by the Applicant to cover the ongoing costs of administering the affordability requirements.
- 9.6.8.4.4 Except as provided in this Section, no additional housing affordability mandates pursuant to this Bylaw shall apply to development authorized under an Area Master Plan.
- 9.6.8.4.5 The Planning Board may adopt and from time to time amend regulations to assure that the affordable and moderate income housing units are developed concurrent with and are visually indistinguishable (except for unit size) from the market-rate housing units, for processes for local preference and other aspects of occupant household selection, and for means of assuring price levels for affordable and moderate income units in perpetuity.

9.6.9 Conditions. The following conditions shall apply in MUODs:

- 9.6.9.1 **Parking Requirements.** Requirements to assure parking adequacy are to be established in the Area Master Plan, which may depart from the provisions of Section 6.1, Off-Street Parking in the following ways:
 - 9.6.9.1.1 A special permit to reduce the number of required parking spaces pursuant to Sections 6.1.8 and 6.1.10 may be consolidated into a MUOD Area Master Plan special permit application and acted upon by issuance of an Area Master Plan special permit by the Planning Board, to be implemented on a phase by phase basis. The obligations to reserve space for the reduced parking and to limit development to that which would be feasible absent a special permit for parking reduction may not apply, provided that adequacy of the reduced number shall be monitored in the initial phase of the development and authorization for future phases shall be based upon adequacy of that performance.
 - 9.6.9.1.2 Shared joint off-street parking spaces, which include parking garages, may be located on contiguous lots or on lots that are within eight hundred (800) feet walking distance of the building entrance to be served.
 - 9.6.9.1.3 There shall be no minimum parking setback requirements as required in Section 6.1.18 except at any boundary line at the perimeter of an Area Master Plan.

- 9.6.9.1.4 Parking shall preferably be structured, but in no event shall it be primarily located so that it separates buildings from street sidewalks. Parking shall instead be primarily located below the building, to its rear, or to its side.
- 9.6.9.1.5 In an Area Master Plan, the Planning Board may vary the requirements of Section 6.1.23 to allow for access or egress points to a parking area to be closer than one hundred fifty (150) feet to the centerline of an intersecting street and to allow for more than two (2) access and two (2) egress points to any one parking area.
- 9.6.9.2 Water Resource Protection District. The requirements of Section 9.3, Water Resource Protection Overlay District (WRPOD), shall apply within areas subject to both the WRPOD and the MUOD, except as follows:
 - 9.6.9.2.1 For purposes of Section 9.3.4, the reference to uses for any purpose by special permit in the underlying district shall also refer to uses for any purpose by special permit in the MUOD.
 - 9.6.9.2.2 Petroleum products in the fuel tanks of vehicles within parking structures within the MUOD shall not be considered storage of liquid petroleum products.
 - 9.6.9.2.3 Within the MUOD, minimum lot area shall be consistent with Section 9.6.7.3.
 - 9.6.9.2.4 For purposes of calculating the minimum amount of vegetation area and the amount of impervious materials coverage in Section 9.3.7.3, the references to "lot" shall be deemed to be to the area subject to an Area Master Plan Special Permit or application therefor. If an Area Master Plan includes areas within both the MUOD and WRPOD, and if impervious materials cover more than fifteen percent (15%) of the portion of such area within the WRPOD, then all storm drainage other than roadway runoff, and as allowed by the Department of Environmental Protection (DEP), parking lot runoff, shall be recharged within the area subject to the Area Master Plan and roadway and such parking lot runoff shall comply with the stormwater management standards adopted by the Massachusetts Department of Environmental Protection.
- 9.6.9.3 **Open Public Amenity Areas.** Not less than ten percent (10%) of the aggregate land area exclusive of wetlands contained within the Area Master

Plan must be comprised of areas to which the public has at least visual access, including landscaped areas and such features as pedestrian walks, patios, landscaped plazas, and incidental structures to support them, but excluding auto traveled ways, driveways and parking surfaces. An initial determination of whether a particular area or feature meets this requirement shall be made by the Planning Board in its decision on the Area Master Plan and a definitive decision shall be made pursuant to the review of individual projects within an Area Master Plan under Section 7.3, Environmental Impact and Design Review.

- 9.6.9.4 **Sign Locations.** Signs may be set back less than the fifteen (15) feet from the street line as required in Section 6.2.5. Signs or sign structures may project or extend over sidewalks only.

9.6.10 **Area Master Plan Requirements.** Application for a special permit for approval of a MUOD Area Master Plan shall be accompanied by the following and all other application materials required by rules and regulations to be adopted by the Planning Board for administration of these provisions.

- 9.6.10.1 Narrative, tabular and graphic description of existing conditions in the MUOD and, in a general manner, in adjoining areas.
- 9.6.10.2 Narrative, tabular and graphic description of the proposal, including:
- 9.6.10.2.1 schematic development plans, indicating boundaries of the Area Master Plan, buildings, vehicular and pedestrian circulation, parking, reserved open public amenity areas, topography, areas of retained vegetation and areas proposed for landscaping, and division of land into lots;
 - 9.6.10.2.2 schematic infrastructure plan, indicating utilities and stormwater management provisions;
 - 9.6.10.2.3 materials indicating the proposed ultimate floor area in each use in each phase;
 - 9.6.10.2.4 tabulation of the number of housing units proposed by phase, categorized by building type (multi-family, attached single-family, etc.), bedroom type (studio, one-bedroom, etc.), floor area in each type of housing unit and affordability provisions;
 - 9.6.10.2.5 service improvements, such as off-site street and intersection improvements, or other capital improvements proposed to be made at the expense of the Applicant and those anticipated at public expense, and if public, the

anticipated source (e.g. District Improvement Financing (DIF), Tax Increment Financing (TIF), State grants);

- 9.6.10.2.6 description of the proposed transportation demand management (TDM) program identifying commitments, to a designated TDM manager, employer contributions to employee public transportation passes, shuttle bus capital contribution, car pool, van pool, guaranteed ride home, flex hours, promotional programs and similar efforts, the anticipated automotive trip generation reductions resulting from the TDM program and the means of making change if these reductions are not realized.
- 9.6.10.3 Analysis indicating how the project serves jobs, housing, taxes, services, environmental concerns including groundwater quality and quantity, community image and other interests of Town residents.
- 9.6.10.4 Impact analyses of appropriate issues as may be identified by the Town, including identification of public facility improvements to be made by the Applicant or by others, including:
 - 9.6.10.4.1 Analysis of access demands by category of use and project phase indicating total person trip generation, modal split among automotive and other modes, distribution of trips by mode and destination, allocation of trips to specific major roadways, commuter rail and other elements of the transportation system, and anticipated ability of those elements to accommodate the demand. All information shall include data for morning and afternoon peak hours, weekend peak hours, average daily data and peak holiday/season use;
 - 9.6.10.4.2 School enrollment by primary, middle and high school level and anticipated ability of existing or committed facilities to accommodate the demand;
 - 9.6.10.4.3 A water budget analysis for affected sub-basins, analyzing net flows as a result of inflows (septic or other recharge, stormwater discharges) and outflows (surface water diversions, groundwater withdrawals, sewer flows leaving the sub-basin, other consumptive uses), shown for the current condition and for the post-development condition, reflecting proposed mitigations;
 - 9.6.10.4.4 A water quality analysis for potentially affected public water wellhead recharge areas, indicating projected change

in contaminant levels resulting from full development of the Area Master Plan and its proposed mitigations.

- 9.6.10.5 Description of project timing and phasing of development and mitigations into three or more phases, depending upon project scale and length of anticipated build-out, which may not exceed ten (10) years from the grant of the Area Master Plan special permit. As provided in M.G.L. Chapter 40A, Section 9, the special permit approval of such Area Master Plan, including the consolidated special permit approvals therein, shall expire two (2) years from the date of approval unless construction or substantial use of such Area Master Plan has commenced (except for good cause), meaning in this context that construction must begin on at least one building and the phasing schedule must be adhered to thereafter provided that such two (2)-year period shall not include such time required to pursue or await the determination of an appeal referred to in M.G.L. Chapter 40A, Section 17.
- 9.6.10.6 Description of proposed methods for monitoring impacts of each phase of development and means of making change in later phases if earlier phases have traffic, school enrollment, groundwater water quality or quantity, or other impacts substantially departing from those in the projections upon which the Planning Board relied on in its approval of the Area Master Plan special permit, but only to the extent attributable to development pursuant to such Area Master Plan special permit.
- 9.6.10.7 Graphic visualization materials conveying the nature and character of the proposed development, and its relationship to nearby surroundings, whether through models, perspective drawings, digital simulations or other means.
- 9.6.10.8 A land division plan showing the division of land into lots, and incorporating a tabulation indicating for each lot and totaled for the Area Master Plan:
- 9.6.10.8.1 Lot area;
 - 9.6.10.8.2 Existing and proposed maximum gross floor area, divided among residential, retail service and other uses;
 - 9.6.10.8.3 Maximum proposed housing units;
 - 9.6.10.8.4 Maximum proposed impervious surface;
 - 9.6.10.8.5 Minimum proposed Open Public Amenity Area.

9.6.11 Authorization of First Phase. At the request of the Applicant, the Planning Board may authorize the first phase ("Phase I") of a project pursuant to an Area Master Plan special permit as follows:

- 9.6.11.1 Except as provided in this Section 9.6.11, all requirements of Section 9.6 shall apply to Phase I, including but not limited to the information required under Section 9.6.10, Area Master Plan Requirements and Section 9.6.13.1, Environmental Impact and Design Review.
- 9.6.11.2 Phase I shall include only nonresidential uses. Residential uses shall not be authorized except in accordance with a special permit for the entire Area Master Plan.
- 9.6.11.3 Phase I shall not exceed more than twenty-five percent (25%) of the approximate total gross floor area of the Area Master Plan.
- 9.6.11.4 In conjunction with the submittal of an application for a Phase I special permit, the Applicant shall also submit a plan for the future development of the balance of the Area Master Plan ("Future Development Plan"). The Future Development Plan shall include information regarding the location of all parcels that will be subject to the Area Master Plan, the approximate total gross floor area of the Area Master Plan project, projected uses, projected infrastructure improvements, projected public amenities, projected project timing and phasing of development and such other information regarding the balance of the Area Master Plan as the Planning Board may require.
- 9.6.11.5 The Applicant shall submit an application for an Area Master Plan special permit for the entire project to the Planning Board within six (6) months following approval of Phase I. The Planning Board may extend this deadline by an additional six (6) months upon a demonstration by the Applicant that good cause exists for such extension.
- 9.6.11.6 The Planning Board shall grant a special permit for Phase I of an Area Master Plan and any other special permits consolidated therein pursuant to Section 9.6.4 for Phase I only upon its written determination that Phase I is consistent with the Decision criteria set forth in Section 9.6.12. The Phase I special permit shall be incorporated by reference and made part of the full Area Master Plan special permit.
- 9.6.11.7 No building, structure or other improvements outside of Phase I shall commence until the special permit for the entire Area Master Plan has been granted.

9.6.12 Decision. A special permit for an Area Master Plan and any other special permits consolidated therein pursuant to Section 9.6.4 shall be granted by the Planning Board

only upon its written determination that the beneficial effects of implementing the proposed Area Master Plan will outweigh any adverse impacts on the Town or the neighborhood, in view of the particular characteristics of the site, and of the project in relation to that site, and that the uses allowed are in harmony with the general purpose and intent of this Bylaw. If multi-family use is included in the application, the Planning Board shall also determine that the public good will be served after a finding that the underlying zoning district is not adversely affected by multi-family use and that uses permitted in such district are not noxious to multi-family use. In addition to any specific factors that may be set forth elsewhere in this Bylaw, the determination shall include consideration of each of the following:

- 9.6.12.1 ability of transportation, utilities, schools and other public facilities, and other public infrastructure as existing, or as committed by the Town or the Applicant to be improved, to serve the project adequately and safely without material deterioration in service to other locations;
- 9.6.12.2 degree to which the project will increase the economic value of the site, generate employment opportunities and generate sustaining economic benefit to the Town;
- 9.6.12.3 degree to which the project is consistent with the principles of transit-oriented development, including higher density, mix of uses, pedestrian-oriented design, connectivity, mix of transportation choices and reduction in automotive use;
- 9.6.12.4 extent to which the project will serve identified housing needs of the Town and the region;
- 9.6.12.5 extent to which the project can restore any degraded environmental resources, including groundwater, waterways and contaminated soils;
- 9.6.12.6 ability of the project to assure design integration among adjoining sites within the Area Master Plan and elsewhere within the MUOD and to assure compatibility with adjoining sites outside of the MUOD, including architectural compatibility, roadway alignments and pedestrian access;
- 9.6.12.7 degree to which the project provides for effective flood mitigation and stormwater storage and other mitigation measures for the site and proximate residential properties and the degree to which the project protects sub-basin groundwater volume and quality;
- 9.6.12.8 degree to which the project provides for buffering and screening from nearby residential properties.

9.6.13 Conditions.

- 9.6.13.1 **Environmental Impact and Design Review.** Approval of an Area Master Plan does not substitute for the otherwise required review of individual buildings pursuant to Section 7.3, Environmental Impact and Design Review, except as expressly hereinafter provided. To the extent that a building's impacts, mitigation and features are approved as part of the Area Master Plan, such impacts, mitigation and features shall be reviewed for consistency with the Area Master Plan special permit, subject to the provisions of Section 9.6.10.6. Consistency with the Area Master Plan special permit shall be a requirement in the Section 7.3 review of individual building applications, except for minor departures, as determined by the Planning Board. The following will not be considered to be "minor" and will require a special permit amendment to the Area Master Plan:
- 9.6.13.1.1 A proposed amount of development exceeding the amount authorized for that category of use cumulatively through that phase in the Area Master Plan;
 - 9.6.13.1.2 An unmitigated increase beyond the explicit impact limitations established in the Area Master Plan;
 - 9.6.13.1.3 Failure to make provision for impact mitigations required in the Area Master Plan;
 - 9.6.13.1.4 Substantial departure from the configuration of building forms and access patterns indicated in the Area Master Plan;
 - 9.6.13.1.5 Other departures whose impacts because of their scale, severity or kind would be of substantial public consequence.
- 9.6.13.2 **Assurance of Impact Mitigations.** Since approval of an Area Master Plan authorizes substantial increases in permissible densities of population and employment, a condition of the special permit for the Area Master Plan shall be that the project shall mitigate some or all of the impacts of those density increases on water and sewer utilities, off-site traffic circulation facilities and schools through grants and incentives obtained from other agencies or contributions at the expense of the Applicant.
- 9.6.13.3 **Transfer of Development Authorizations and Obligations.** Area Master Plan authorizations for building gross floor area, housing units, impervious surface and obligations for Open Public Amenity Area and impact mitigations may be transferred between lots and between owners

provided that the Planning Board, prior to endorsing a revised version of the land division plan as required in Section 9.6.10.8, determines that the transfer is consistent with the approved Area Master Plan, making no more than "minor" departures as provided for in Section 9.6.13.1.

- 9.6.13.4 **Reimbursement for Consultants.** It will be necessary for the Planning Board to hire consultants in connection with the review and evaluation of the Area Master Plan and of subsequent applications under Section 7.3, Environmental Impact and Design Review. The Planning Board will be reimbursed by the Applicant for the reasonable fees and expenses of such consultants, and each application for a special permit pursuant to this Section or to Section 7.3 review hereunder shall contain an agreement by the Applicant to that effect.
- 9.6.13.5 **Non-Regulatory Agreements.** Development under an approved Area Master Plan, in addition to compliance with provisions of this Section and other regulatory provisions, will involve memoranda of understanding or non-regulatory agreements reached among those proposing development, the Town, and possibly other entities, such as other governmental agencies. Said non-regulatory agreements shall be incorporated by reference and made part of a Phase I special permit and full Area Master Plan special permit.
- 9.6.13.6 **Appeal.** As the Area Master Plan special permit is appealable under applicable state law and notwithstanding Section 7.3.13, the Planning Board's decision pursuant to Section 7.3, Environmental Impact and Design Review, of individual buildings or phases of a project subject to an Area Master Plan special permit is not appealable pursuant to M.G.L. Chapter 40A, Section 17 but only in accordance with other applicable state law.